

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X	:	
KBM WORLDWIDE, INC.	:	
	:	Civil Action No.: cv-15-7254
Plaintiff,	:	(SJF) (GRB)
	:	
-against-	:	
	:	
HANGOVER JOE’S HOLDING CORPORATION :	:	<u>VERIFIED REPLY</u>
AND MATTHEW VEAL,	:	
	:	
	:	
Defendants.	:	
----- X	:	

Plaintiff, KBM Worldwide, Inc. (“KBM”), by its attorneys, Naidich Wurman LLP as and for its Verified Reply to the Defendants’ Verified Answer and Counterclaims, shows and alleges as follows:

1. Denies each and every allegation contained in paragraphs 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98 and 99 of the Answer and Counterclaims.

2. Denies each and every other allegation contained in the Answering Counterclaims not otherwise specifically denied herein above.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

3. KBM repeats and realleges the allegations in paragraphs 1 and 2 of this Reply with the same force and effect as if fully set forth at length herein.

4. That the counterclaims failed to state a cause of action for the relief sought therein.

5. That by reason of the foregoing, the counterclaims should be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

6. KBM repeats and realleges the allegations in paragraphs 1-5 of this Reply with the same force and effect as if fully set forth at length herein.

7. That a defense to the counterclaim is founded upon documentary evidence.

8. That by reason of the foregoing, the counterclaims should be dismissed.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

9. KBM repeats and realleges the allegations in paragraphs 1–8 of this Reply with the same force and effect as if fully set forth at length herein.

10. That the Defendants have not suffered any damages and in any event have failed to mitigate any such purported damages.

11. That by reason of the foregoing, the counterclaims should be dismissed.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

12. KBM repeats and realleges the allegations in paragraphs 1–11 of this Reply with the same force and effect as if fully set forth at length herein.

13. That the counterclaims do not meet the pleading requirements of the Federal Rules of Civil Procedure and do not allege fraud or other wrong doing with the necessary specificity.

14. That by reason of the foregoing, the counterclaims should be dismissed.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

15. KBM repeats and realleges the allegations in paragraphs 1–14 of this Reply with the same force and effect as if fully set forth at length herein.

16. That the transactions between the parties are not consumer related transactions within the meaning of the General Business Law such that that law is inapplicable.

17. That by reason of the foregoing, the counterclaims should be dismissed.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

18. KBM repeats and realleges the allegations in paragraphs 1–17 of this Reply with the same force and effect as if fully set forth at length herein.

19. That the relief sought in the counterclaims is barred by the doctrine of unclean hands and bad faith.

20. That by reason of the foregoing, the counterclaims should be dismissed.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

21. KBM repeats and realleges the allegations in paragraphs 1–20 of this Reply with the same force and effect as if fully set forth at length herein.

22. That the relief sought in the counterclaims is barred by the doctrine of waiver.

23. That by reason of the foregoing, the counterclaims should be dismissed.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

24. KBM repeats and realleges the allegations in paragraphs 1–20 of this Reply with the same force and effect as if fully set forth at length herein.

25. That the relief sought in the counterclaims is barred by the doctrine of estoppel.

26. That by reason of the foregoing, the counterclaims should be dismissed.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

27. KBM repeats and realleges the allegations in paragraphs 1–26 of this Reply with the same force and effect as if fully set forth at length herein.

28. That the relief sought in the counterclaims is barred by the doctrine of laches.

29. That by reason of the foregoing, the counterclaims should be dismissed.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

30. KBM repeats and realleges the allegations in paragraphs 1–26 of this Reply with the same force and effect as if fully set forth at length herein.

Dated: Great Neck, New York
January 27, 2016

NAIDICH WURMAN LLP

By: 

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